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Massachusetts Division of Banks
1000 Washington Street
10th Floor
Boston, MA 02118-6400

Re: Proposed Regulations; 209 CMR 57.00: Flood Insurance

Dear Sirs:

The National Reverse Mortgage Lenders Association (“NRMLA”) is the national voice of the reverse mortgage industry. With over 300 member companies and over 1300 member delegates, NRMLA serves as an educational resource, policy advocate and public affairs center for lenders and related professionals. NRMLA was established in 1997 to enhance the professionalism of the reverse mortgage business. Our mission is to educate consumers about the pros and cons of reverse mortgages, to train lenders to be sensitive to clients' needs, to enforce our Code of Ethics and Professional Responsibility¹, and to promote reverse mortgages in the news media.

Introduction and Discussion

Chapter 177 of the Acts of 2014 (Chapter 177), An Act Further Regulating Flood Insurance, amends Massachusetts General Laws chapter 183 by adding section 69 (Section 69), which prohibits creditors and creditors' representatives from requiring flood insurance that is greater than the balance of a residential mortgage loan (or the available line of credit under a HELOC), includes coverage for contents, or that includes a deductible of less than \$5,000. Section 69 also requires that creditors, creditors' representatives, and insurance producers provide borrowers with a notice about flood insurance coverage before it is purchased.

The majority of reverse mortgages originated today are Federal Housing Administration (FHA)-insured Home Equity Conversion Mortgages (or HECMs). FHA regulations make cross reference to the federal Flood Disaster Protection Act of 1973 (which enacted the National Flood Insurance Program, or NFIP) and limit flood insurance that must be obtained and maintained in an amount equal to the least of:

- the outstanding principal balance of the loan(s); or
- the maximum amount of the NFIP insurance available with respect to the property type; or
- the development cost of the property, less estimated land cost.²

¹ <http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx>

² See FHA Mortgagee Letter 2012-28 (Dec. 11, 2012).

Regulations under the NFIP also require a minimum deductible of \$1,000.

On November 21, 2014, the Massachusetts Division of Banks proposed regulations to implement Chapter 177. The proposed regulations specify a Model Notice to meet the disclosure requirements under Chapter 177. As proposed, a creditor is not authorized to change the Model Notice in any way.

Answers to frequently asked questions posted by the Massachusetts Division of Banks regarding Chapter 177 provide that the Division would not construe an agency condition on flood insurance coverage (such as the FHA) which must be satisfied to obtain assistance through such program as a requirement of the creditor or creditor's representative originating the mortgage loan.

The majority of reverse mortgages originated today are Federal Housing Administration (FHA)-insured Home Equity Conversion Mortgages (or HECMs). HECMs can be and are structured as open end (i.e., reverse HELOCs) or closed end credit as defined under Regulation Z. FHA HECM guidelines require that flood insurance under the NFIP be placed on the collateral property securing a HECM loan if the property is in a flood zone.³

Comments

We are concerned that the Model Notice published with the Division's proposed regulations provides information that is in part in conflict with the amount of flood insurance allowed under FHA regulations with regard to FHA-insured loans such as HECMs (in the area of HELOCs). We are also concerned that minimum deductible specified under Section 69 as amended by Chapter 177 conflicts with under the NFIP.

We further note that some federal courts have held that, since the NFIP is a child of Congress, conceived to achieve policies which are national in scope, and since the federal government participates extensively in the program both in a supervisory capacity and financially, it is clear that the interest in uniformity present in cases under consideration mandate the application of federal law. *West v. Harris*, 573 F.2d 873 (5th Cir. 1978).

It is well recognized that "federal law governs disputes over coverage arising under the National Flood Insurance Act of 1968." *Hanover Bldg. Materials, Inc.*, 748 F.2d at 1013; see *Flick*, 205 F.3d at 390; *McHugh v. United Servs. Auto. Ass'n*, 164 F.3d 451, 454 (9th Cir. 1999); *Leland v. Federal Ins. Adm'r*, 934 F.2d 524, 529 (4th Cir.), cert. denied, 502 U.S. 957, 116 L. Ed. 2d 437, 112 S. Ct. 417 (1991); *Sodowski v. National Flood Ins. Program*, 834 F.2d 653, 655 (7th Cir. 1987), cert. denied, 486 U.S. 1043, 100 L. Ed. 2d 619, 108 S. Ct. 2035 (1988); *West*, 573 F.2d at 881-82. "When such disputes arise, they are resolved under federal law 'by drawing upon standard insurance law principles.'" *Hanover Bldg. Materials, Inc.*, 748 F.2d at 1013 (quoting *West*, 573 F.2d at 881); accord *Flick*, 205 F.3d at 390. "The meaning and effect of the insurance contract depends on the meaning and effect of the regulations, and the statute authorizing and directing the regulations and defining the coverage." *Berger*, 933 F.2d at 397. "Federal law has long recognized that an insured must comply strictly with the terms and conditions of a federal insurance policy." *Flick*, 205 F.3d at 390 (citing *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384-85, 92 L. Ed. 10, 68 S. Ct. 1 (1947)). As a consequence, "case-law clearly indicates that federal common and statutory law preempts state principles of contract law for purposes of the interpretation of policies issued pursuant to the National Flood Insurance Act of 1968." *Friedman v. South Carolina Ins.*

³ See HUD HECM Handbook 4235.1, REV, ¶ 3-4(H).

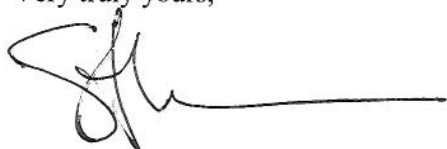
Co., 855 F. Supp. 348, 350 (M.D. Fla. 1994). See also, for instance, *Jamal v. Travelers Lloyds of Tex. Ins. Co.*, 129 F. Supp. 2d 1024 (2001).

Therefore, we request that the Division clarify that mortgagees may amend the Model Notice slightly to make clear that a mortgagee will not require flood insurance in excess of applicable law, which includes federal law. We further request that the Division clarify that a mortgagee will not be in violation of Massachusetts law if it follows federal law with regard to minimum flood insurance claim deductibles required under federal law. Finally, we request that the Division place into the regulations its FAQ stating that a mortgagee following federal agency requirements is not a mortgagee requirement imposed upon borrowers.

Conclusion

We commend the Division on its regulatory proposal. We trust that the Division will find our comments to the proposed rule both helpful and informative, and we trust that you will act upon them favorably.

Very truly yours,



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